



Department of Business Regulation

233 Richmond Street
Providence, RI 02903

Insurance Bulletin Number 2003-16

Surplus Line Affidavits Requirements

[R.I. Gen. Laws § 27-3-38](#) and [Insurance Regulation 11](#) require that the Surplus Line Broker make a “Diligent Effort” to place the risk in the licensed market prior to submitting the risk to an approved Surplus Lines Insurer and to file the Affidavit by Broker and Insured (“Affidavit”) with the Department within sixty (60) days after the policy has been procured. The Department has undertaken to assure compliance with the statute and Regulation by evaluation of the declinations listed on the Affidavit.

The Department has observed two (2) categories of non-compliance with the “Diligent Effort” requirement. First, some Affidavits have been filed with fewer than three (3) declinations. Surplus Lines Brokers must assure that three (3) declinations are listed and that all three (3) are licensed insurers prior to filing the Affidavit with the Department. If an insurance producer (also referred to in the industry as a “retail broker” or “retail agent”) has access to fewer than three (3) licensed insurers, (s)he is not relieved from the statutory requirement that either the licensed insurance producer or the insured obtain three (3) declinations. Surplus Lines Brokers may not accept Affidavits with less than three (3) declinations. Second, the Department has observed that Surplus Lines Brokers have listed among the declinations insurers that do not write the type of risk for which coverage was sought. For example, an insurer known to write only automobile coverage has been listed as declining a property risk and a commercial risk has been submitted to a company writing personal lines only. The Department does not consider those to satisfy the “Diligent Effort” requirement. The Affidavit must list three (3) declinations from licensed insurers who write the specific line of business in order for the “Diligent Effort” requirement to be satisfied. The Department will reject any Affidavit that does not contain declinations from three (3) insurers licensed in this state.

With regard to retail brokers who have binding authority from licensed insurance company(ies), the retail broker may list (him)herself as the declining authority on behalf of the licensed company(ies), along with the name of the licensed company(ies), if (s)he knows for a fact that the risk does not meet the licensed company’s underwriting guidelines. The Department may inquire as to the basis of the declination from the retail broker. Therefore, retail brokers should be able to document the underwriting guidelines upon which the declination is based.

The Department has also observed that some Surplus Lines Brokers are failing to comply with Insurance Regulation 11(5)(d) which provides that the Affidavit must be submitted to the Department within sixty (60) days after a Surplus Line policy has been procured. The Department intends to enforce the sixty (60) day timeframe requirement.

The Department will take appropriate administrative action to assure compliance with the above requirements.

Marilyn Shannon McConaghy
Director, Department of Business Regulation
September 19, 2003